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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,481	06/29/2001	Steven D. Ritchie		5289

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EXAMINER

GILBERT, SAMUEL G

ART UNIT	PAPER NUMBER
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3736

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DATE MAILED: 07/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/893,481

Applicant(s)

RITCHIE ET AL.

Examiner

Samuel G Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 1, 6 and 7 recites the broad recitation of dimensions for the device, and the claims also recites a preferable dimension for each range which is the narrower statement of the range/limitation.

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Claim 3 – “the first surface” line 2, lacks antecedent basis.

Claim 4 – “a flat second surface” line 2, is indefinite because a flat first surface has not been set forth. In line 2, “the first surface” lacks antecedent basis.

Claim 5 – “a flat second surface” line 2, is indefinite because a flat first surface has not been set forth and also it is unclear if it is the same as the flat second surface set forth in claim 4. In line 2, “the first surface” lacks antecedent basis. Also, It is unclear which second surface “the second surface” is referring to.

Claim 7 – “a flat second surface”, line 9, is indefinite because a flat first surface has not been set forth; “the first surface” line 10, “the surface” line 12, and “the first surface” lines 12 and 13, lack antecedent basis.

Claim 9 – “a flat second surface” line 6, is indefinite because a flat first surface has not been set forth. In lines 7 and 9/10, “the first surface” lacks antecedent basis. In line 9, “the surface” lacks antecedent basis.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over “shapely plug”, page 33 of the “Good Vibrations” catalog. The shapely plug has several sizes set forth. The small size is 3 inches long and  $\frac{3}{4}$  inch in diameter. On page 33, a variety of

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devices are set forth all having different sizes. The size of the base is not set forth. A change in the size of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 237(CCPA 1955). The selection of a particular size. The exact dimensions of the sexual aid are generally an obvious matter of design choice to practitioners in the medical art. The selection of a particular size of any sexual aid is of no patentable significance.

*No good Daile*

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Original Glass Dildo, "The Spinner" and "The Dialer". The applicant's attention is invited to [www.theoriginalglassdildo.com](http://www.theoriginalglassdildo.com). According to the website these Pyrex devices have been manufactured since 1998. A change in the size of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 237(CCPA 1955). The selection of a particular size. The exact dimensions of the sexual aid are generally an obvious matter of design choice to practitioners in the medical art. The selection of a particular size of any sexual aid is of no patentable significance.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the humps on the base of the Spinner on the base of the Dialer to provide additional stimulation as described in the description of the Spinner.

Pyrex is defined, from Webster's Ninth New Collegiate Dictionary as "used for glass or glassware, that contains appreciable oxide of boron and is resistant to heat, chemicals, and electricity.

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It is the examiners position that the knob of the spinner and dialer have recesses formed on each side of the knob.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The applicant is directed to the websites [www.altglassworks.com](http://www.altglassworks.com) (one page included) which shows a Pyrex dildo having a recess for rotating the device and [www.naughtytoyz.com](http://www.naughtytoyz.com) (two pages included) which shows a ribbed juicer having all the features of the invention but in both cases the references are not considered prior art because the dates are after the filing date of the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G Gilbert whose telephone number is 703-308-3553. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703-308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and 703-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Samuel G Gilbert  
Primary Examiner  
Art Unit 3736

sgg  
June 28, 2002